



February 17, 2015

HOUSE BILL No. 1508

DIGEST OF HB 1508 (Updated February 17, 2015 12:57 pm - DI 87)

Citations Affected: IC 36-7.

Synopsis: Performance bonds of land developers. Prohibits a unit of local government from adopting or enforcing an ordinance, rule, or other policy requiring a land developer of Class 1 or Class 2 structures to do the following: (1) Obtain a performance bond or other surety before the approved secondary subdivision plat, is approved; with certain exceptions. (2) Obtain a maintenance bond that exceeds certain limits on the amount of the bond and on the effective period of the bond. Authorizes a unit of local government, after a secondary plat is recorded, to require the land developer to obtain a performance bond or other surety for incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks, landscaping, and erosion control that are in the approved development or required to service the approved development. Provides, however, that: (1) the ordinance, rule, or policy requiring a land developer to obtain a performance bond must provide for the timely release of the bond upon completion or substantial completion of the subject matter upon which the bond was obtained; and (2) the performance bond must be based on or in certain circumstances, exceed an engineer's estimate or an actual contract amount and may not include land that is not then under development. Allows a land developer to delegate the duty to obtain a performance or maintenance bond for a specific parcel or lot to a subsequent possessor in interest who will make additional improvements to the parcel or lot before the parcel or lot is transferred to the final owner if the person delegated the duty will acquire a majority of the lots in the development. Allows the local unit to require a developer to provide notice that the developer has delegated its duty to obtain a performance or maintenance bond.

Effective: July 1, 2015.

VanNatter

January 20, 2015, read first time and referred to Committee on Government and Regulatory Reform.
February 17, 2015, amended, reported — Do Pass.

HB 1508—LS 7160/DI 55



February 17, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1508

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-7-4-709, AS AMENDED BY P.L.126-2011,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 709. (a) Secondary approval under section 710 of
4 this chapter may be granted to a plat for a subdivision in which the
5 improvements and installments have not been completed as required
6 by the subdivision control ordinance, if:
7 (1) the applicant provides a bond, or other proof of financial
8 responsibility as prescribed by the legislative body in the
9 subdivision control ordinance, that:
10 (A) is an amount determined by the plan commission or plat
11 committee to be sufficient to complete the improvements and
12 installations in compliance with the ordinance; and
13 (B) provides surety satisfactory to the plan commission or plat
14 committee; or
15 (2) with respect to the installation or extension of water, sewer, or

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1 other utility service:

2 (A) the applicant shows by written evidence that it has entered
3 into a contract with the political subdivision or utility
4 providing the service; and

5 (B) the plan commission or plat committee determines based
6 on written evidence that the contract provides satisfactory
7 assurance that the service will be installed or extended in
8 compliance with the subdivision control ordinance.

9 (b) Any money received from a bond or otherwise shall be used only
10 for making the improvements and installments for which the bond or
11 other proof of financial responsibility was provided. This money may
12 be used for these purposes without appropriation. The improvement or
13 installation must conform to the standards provided for such
14 improvements or installations by the municipality in which it is located,
15 as well as the subdivision control ordinance.

16 (c) The plan commission shall, by rule, prescribe the procedure for
17 determining whether all improvements and installations have been
18 constructed and completed as required by the subdivision control
19 ordinance. The rule must designate the person or persons responsible
20 for making the determination.

21 **(d) As used in this section, "land developer" has the meaning set**
22 **forth in IC 6-1.1-4-12(a).**

23 **(e) As used in this section, "under development" means a**
24 **situation with respect to land in which a primary plat has been**
25 **filed and approved and work has commenced to make substantive**
26 **physical improvements to the land, excluding any work performed**
27 **for the purpose of preparing the land.**

28 **(f) A local unit may not adopt or enforce an ordinance, rule, or**
29 **other policy requiring a land developer of Class 1 or Class 2**
30 **structures to do any of the following:**

31 **(1) Obtain a performance bond or other surety before the**
32 **date on which the land developer records an approved**
33 **secondary plat, except that a local unit may require the land**
34 **developer to obtain a performance bond before a secondary**
35 **plat is recorded if the area under development is:**

36 **(A) within the existing public right-of-way; or**
37 **(B) related to erosion control.**

38 **(2) Obtain a maintenance bond that:**

39 **(A) amounts to more than twenty percent (20%) of the**
40 **engineer's estimate or actual contract amount, when**
41 **available, to construct the bonded item; or**

42 **(B) has an effective period greater than three (3) years.**



(g) After a secondary plat is recorded, a local unit may require, before approval, that the land developer or the person delegated the land developer's duty, as provided in subsection (i), obtain a performance bond or other surety for any incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks, landscaping, and erosion control that:

(1) are:

(A) in the approved development; or

(B) required to service the approved development; and

(2) are included within:

(A) the legal description of the recorded plat; or

(B) a section in the legal description of the recorded plat; identified in the land developer's secondary plat filing.

(h) Any ordinance, rule, or policy requiring a land developer or a person delegated a land developer's duty to obtain a performance bond or other surety under subsection (g) shall include a provision for the timely release of the performance bond upon completion or substantial completion of the subject matter upon which the performance bond was obtained.

(i) A land developer may delegate its duty under subsection (g) to obtain a performance bond or maintenance bond for a specific parcel or lot to a subsequent possessor in interest who will make additional improvements to the parcel or lot before the transfer of ownership at closing of the parcel or lot, including all improvements to the parcel or lot, to the final owner if the person or entity to whom the duty is being delegated has acquired, or will acquire, a majority of the parcels or lots within the area under development. A local unit may not prohibit, restrict, or otherwise interfere with a land developer's right to delegate its duties as provided in this subsection. A local unit may require a land developer to provide notice to the local unit if the land developer has delegated its duty to obtain a performance bond or maintenance bond as provided in this section.

(j) A performance bond or other surety requirement under subsection (f)(1) or subsection (g):

(1) must be based on a value provided for in an engineer's estimate or an actual contract amount, if available, to complete:

(A) the portion of the area or improvement of the project;

or

(B) designated section in the project; being bonded;



1 (2) may be based on an amount in excess of the full value of
2 the engineer's estimate or actual contract amount, as
3 appropriate, provided that any excess amount is based upon
4 a reasonable adjustment for the estimated cost of inflation or
5 materials and labor encompassed within the subject matter of
6 the performance bond or other surety; and
7 (3) may not include any land that is not under development at
8 the time the bond or other surety is required, such as sections
9 of adjacent or contiguous land that remain undeveloped,
10 except to the extent that the land not then under development
11 is used to access the site or provide utilities or other necessary
12 services to the land that is under development.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1508, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 32, delete "receives" and insert **"records an approved"**.

Page 2, line 33, delete "approval".

Page 2, line 34, after "before" insert **"a"**.

Page 2, line 35, delete "approval" and insert **"is recorded"**.

Page 2, delete lines 38 through 39.

Page 2, line 40, delete "(3)" and insert **"(2)"**.

Page 2, line 41, delete "ten percent (10%)" and insert **"twenty percent (20%)"**.

Page 2, line 41, after "the" insert **"engineer's estimate or"**.

Page 2, line 42, delete "cost" and insert **"contract amount, when available,"**.

Page 2, line 42, after "item;" insert **"or"**.

Page 3, delete lines 1 through 3.

Page 3, line 4, delete "(C)" and insert **"(B)"**.

Page 3, line 4, delete "the following:" and insert **"three (3) years."**.

Page 3, delete lines 5 through 6.

Page 3, line 7, delete "Upon filing of a plat for secondary approval," and insert **"After a secondary plat is recorded,"**.

Page 3, line 12, after "mains," insert **"sidewalks, landscaping,"**.

Page 3, line 31, delete "." and insert **"if the person or entity to whom the duty is being delegated has acquired, or will acquire, a majority of the parcels or lots within the area under development."**.

Page 3, line 34, after "subsection." insert **"A local unit may require a land developer to provide notice to the local unit if the land developer has delegated its duty to obtain a performance bond or maintenance bond as provided in this section."**.

Page 3, line 36, delete "may not:" and insert **"**:

(1) must be based on a value provided for in an engineer's estimate or an actual contract amount, if available, to complete:".

Page 3, delete lines 37 through 41.

Page 4, line 3, delete **"or"**.

Page 4, between lines 3 and 4, begin a new line, block indented and insert:

"(2) may be based on an amount in excess of the full value of the engineer's estimate or actual contract amount, as



appropriate, provided that any excess amount is based upon a reasonable adjustment for the estimated cost of inflation or materials and labor encompassed within the subject matter of the performance bond or other surety; and".

Page 4, line 4, delete "(2)" and insert "**(3) may not**".

and when so amended that said bill do pass.

(Reference is to HB 1508 as introduced.)

MAHAN

Committee Vote: yeas 9, nays 0.

